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7 PLEXXIKON INC.,
8 Plaintiff,
9 v.
10 NOVARTIS PHARMACEUTICALS
11 CORPORATION,
12 Defendant.

Case No. 17-cv-04405-HSG

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**ORDER GRANTING IN PART AND
DENYING IN PART
ADMINISTRATIVE MOTIONS TO
SEAL**

Re: Dkt. Nos. 499, 539, 542, 583, 596

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21 Pending before the Court are Plaintiff Plexxikon Inc.’s administrative motions to file under
22 seal portions of documents in connection with its opposition to Defendant Novartis
23 Pharmaceuticals Corporation’s motion to exclude expert witnesses at trial; trial disputes about the
24 admissibility of evidence; and the parties’ post-trial motions. *See* Dkt. Nos. 499, 539, 542, 583,
25 596. For the reasons detailed below, the Court **DENIES** Dkt. Nos. 499, 539, and 542; and
GRANTS IN PART and **DENIES IN PART** Dkt. Nos. 583 and 596.

26
I. LEGAL STANDARD

27 Courts generally apply a “compelling reasons” standard when considering motions to seal
28 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*
v. *City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the
common law right ‘to inspect and copy public records and documents, including judicial records
and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor of
access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome this
strong presumption, the party seeking to seal a judicial record attached to a dispositive motion
must “articulate compelling reasons supported by specific factual findings that outweigh the

1 general history of access and the public policies favoring disclosure, such as the public interest in
2 understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations
3 omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in
4 disclosure and justify sealing court records exist when such ‘court files might have become a
5 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
6 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v.*
7 *Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the production of records
8 may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not,
9 without more, compel the court to seal its records.” *Id.*

10 Civil Local Rule 79-5 supplements the “compelling reasons” standard. The party seeking
11 to file under seal must submit “a request that establishes that the document, or portions thereof, are
12 privileged, protectable as a trade secret or otherwise entitled to protection under the law The
13 request must be narrowly tailored to seek sealing only of sealable material” Civil L.R. 79-
14 5(b). Courts have found that “confidential business information” in the form of “license
15 agreements, financial terms, details of confidential licensing negotiations, and business strategies”
16 satisfies the “compelling reasons” standard. *See In re Qualcomm Litig.*, No. 3:17-cv-0108-GPC-
17 MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (observing that sealing such information
18 “prevent[ed] competitors from gaining insight into the parties’ business model and strategy”);
19 *Finisar Corp. v. Nistica, Inc.*, No. 13-cv-03345-BLF (JSC), 2015 WL 3988132, at *5 (N.D. Cal.
20 June 30, 2015).

21 Records attached to nondispositive motions must meet the lower “good cause” standard of
22 Rule 26(c) of the Federal Rules of Civil Procedure, as such records “are often unrelated, or only
23 tangentially related, to the underlying cause of action.” *Id.* at 1179–80 (quotations omitted). This
24 requires a “particularized showing” that “specific prejudice or harm will result” if the information
25 is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th
26 Cir. 2002); *see also* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific
27 examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
28 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

1 **II. DISCUSSION**

2 As indicated in the table below, the only proffered justification for sealing many of the
3 documents is that Defendant or third parties designated information as “highly confidential.” But
4 a designation of confidentiality is not sufficient to establish that a document is sealable. *See Civ.*
5 L. R. 79-5(c). “Confidential” is merely the parties’ initial designation of confidentiality to
6 establish coverage under the stipulated protective order. *See Verinata Health, Inc. v. Ariosa*
7 *Diagnostics, Inc.*, No. 12-cv-05501-SI, 2015 WL 5117083, at *5 (N.D. Cal. Aug. 31, 2015) (“But
8 good cause ‘cannot be established simply by showing that the document is subject to a protective
9 order or by stating in general terms that the material is considered to be confidential’”) (quoting
10 *Bain v. AstraZeneca LP*, No. 09-cv-4147, 2011 WL 482767, at *1 (N.D. Cal. Feb. 7, 2011)).
11 Thus, in many instances the designating party for the materials did not comply with Civil Local
12 Rule 79-5(f)(3), because they did not file a declaration within seven days of the motion. The
13 Court therefore finds that sealing is not warranted as to those documents.

14 Plaintiff also seeks to file under seal portions of documents and exhibits that the Court has
15 previously found sealable. The Court adopts the rationale it articulated earlier in finding these
16 materials sealable, and grants the motions to seal as to these documents.

17 Lastly, third parties GlaxoSmithKline PLC and GlaxoSmithKline LLC seek to seal
18 portions of documents that reference confidential and proprietary business, pharmaceutical
19 research and development, and licensing information. The Court finds that GSK has established
20 compelling reasons to seal these documents, as detailed in the chart below. The public release of
21 these documents could give non-party competitors an unfair advantage in the development,
22 marketing, or licensing of rival products. *See In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th
23 Cir. 2008) (ordering sealing where documents could be used “as sources of business information
24 that might harm a litigant’s competitive standing”) (quoting *Nixon*, 435 U.S. at 598).

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	Docket No. Public / (Sealed)	Document	Portion(s) Sought to be Sealed	Ruling
Dkt. No. 499 – DENIED				
	Dkt. No. 497/ (499-4)	Plexxikon's Opposition to Novartis's Motion to Preclude Plexxikon from Calling Dr. Zuosheng Liu as a Witness at Trial	p. 2:9–10 p. 4:10–16 p. 5:7–11	DENIED (No supporting declaration filed. <i>See</i> Civ. L.R. 79-5(f)(3).)
Dkt. No. 539 – DENIED				
	Dkt. No. 538 / (539-2)	July 13, 2021 Joint Statement Regarding Evidence of GSK's Use of Plexxikon Work and of GSK's Patents	p. 2:26–28, & n.1 p. 3:10 p. 5:2–3, 15–20	DENIED (No supporting declaration filed. <i>See</i> Civ. L.R. 79-5(f)(3).)
	Dkt. No. 538-3 / (539-4)	Exhibit 2 to the Declaration of Daralyn J. Durie in Support of July 13, 2021 Joint Statement Regarding Evidence of GSK's Use of Plexxikon Work and of GSK's Patents	Entire Document	DENIED (No supporting declaration filed. <i>See</i> Civ. L.R. 79-5(f)(3).)
Dkt. No. 542 – DENIED				
	Dkt. No. 543 / (542-4)	Plaintiff Plexxikon, Inc.'s Response to Novartis's Proffer of Testimony of Dr. Tara Rheault	p. 2:15–17, 26–28, & n.2 p. 3:17–18, 25–27, & n.3	DENIED (No supporting declaration filed. <i>See</i> Civ. L.R. 79-5(f)(3).)
	Dkt. No. 543-3, 543-4 / (542-5, 542-6)	Exhibits 2 and 3 to the Declaration of Daralyn J. Durie in Support of Plaintiff Plexxikon, Inc.'s Response to Novartis's Proffer of Testimony of Dr. Tara Rheault	Entire Documents	DENIED (No supporting declaration filed. <i>See</i> Civ. L.R. 79-5(f)(3).)
Dkt. No. 583 – GRANTED IN PART and DENIED IN PART				
	Dkt. No. 585 / (583-4)	Plaintiff Plexxikon, Inc.'s Motion for Enhanced Damages	p. 3:22–25 p. 7:3, 5–7 p. 17:16–23	GRANTED IN PART AND DENIED IN PART (The following excerpts disclose proprietary pharmaceutical research and development, and licensing information: • p. 3:22–25

United States District Court
Northern District of California

1			• p. 17:16–23 <i>See Dkt. No. 588.)</i>	
2	Dkt. No. 585-11 / (583-6)	Exhibit 10 to the Declaration of Hannah Jiam in Support of Plaintiff Plexxikon, Inc.'s Motion for Enhanced Damages	Entire Document	DENIED (No supporting declaration filed. <i>See Civ. L.R. 79-5(f)(3).)</i>
3	Dkt. No. 585-13 / (583-8)	Exhibit 12 Declaration of Hannah Jiam In Support of Plaintiff Plexxikon, Inc.'s Motion For Enhanced Damages	p. 1:9–10 p. 2:6–9 p. 3:16–20, 22–25 p. 4:2–7, 11–12, 27–28 p. 5:1, 7–9, 12–27 p. 6:4–7, 13–15, 17–28 p. 7:1–2, 5–25, 27–28 p. 8:1–6, 15–17; p. 9:20–25, 27–28 p. 10:1–10, 18–22 p. 12:26–28 p. 13:1–8, 11–13 p. 14:2–3, 11–15 p. 15:6, 14, 19	GRANTED (Previously sealed by Court order. <i>See Dkt. No. 386 at 38.)</i>
4	Dkt. No. 585-14 / (583-10)	Exhibit 13 to the Declaration of Hannah Jiam In Support of Plaintiff Plexxikon, Inc.'s Motion for Enhanced Damages	Entire Document	GRANTED (Previously sealed by Court order. <i>See Dkt. No. 386 at 29–30.)</i>
5	Dkt. No. 585-24 / (583-12)	Exhibit 23 to the Declaration of Hannah Jiam In Support of Plaintiff Plexxikon, Inc.'s Motion for Enhanced Damages	Entire Document	DENIED (No supporting declaration filed. <i>See Civ. L.R. 79-5(f)(3).)</i>
6	Dkt. No. 585-28 / (583-14)	Exhibit 27 to the Declaration of Hannah Jiam In Support of Plaintiff Plexxikon, Inc.'s Motion For Enhanced Damages	Entire Document	DENIED (No supporting declaration filed. <i>See Civ. L.R. 79-5(f)(3).)</i>
7	Dkt. No. 596 – GRANTED IN PART and DENIED IN PART			
8	Dkt. No. 598-4 / (596-4)	Exhibit 3 to the Declaration of Eugene Novikov in Support of Plaintiff Plexxikon, Inc.'s Opposition to Novartis' Motion for Judgment as a Matter of Law, New Trial, and/or Remittitur Pursuant	p. 16:16–24	DENIED (No supporting declaration filed. <i>See Civ. L.R. 79-5(f)(3).)</i>
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United States District Court
Northern District of California

	to Federal Rules of Civil Procedure 50 and 59		
Dkt. No. 598-4 / (596-4)	Exhibit 3 to the Declaration of Eugene Novikov in Support of Plaintiff Plexxikon, Inc.'s Opposition to Novartis' Motion for Judgment as a Matter of Law, New Trial, and/or Remittur Pursuant to Federal Rules of Civil Procedure 50 and 59	p. 12, n.6 p. 21:26–27	GRANTED (The excerpts contain proprietary pharmaceutical research and development information. <i>See</i> Dkt. No. 601.)

III. CONCLUSION

The Court **DENIES** Dkt. Nos. 499, 539, and 542; and **GRANTS IN PART** and **DENIES IN PART** Dkt. Nos. 583 and 596. Pursuant to Civil Local Rule 79-5(g)(1), documents filed under seal as to which the administrative motions are granted will remain under seal. The Court **DIRECTS** the parties to file public versions of all documents for which the proposed sealing has been denied, as indicated in the chart above, within seven days from the date of this order.

IT IS SO ORDERED.

Dated: 3/31/2022

Haywood S. Gilliam, Jr.
HAYWOOD S. GILLIAM, JR.
United States District Judge